



CASEY GWINN  
SAN DIEGO CITY ATTORNEY

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June 24, 1999

Honorable Wayne L. Peterson  
Presiding Judge  
San Diego Superior Court  
220 West Broadway  
San Diego, CA 92101

Dear Judge Peterson:

CITY OF SAN DIEGO RESPONSE TO GRAND JURY REPORT  
"LEAKAGE OF GRAND JURY REPORT"

Pursuant to Penal Code section 933.05, the City of San Diego and the City Attorney (collectively "City") provide the following responses to the above entitled Grand Jury Report:

**FINDINGS:**

1. As the hearings progressed, it became apparent that no government official or anyone directly affiliated with the court, per se, was identified with deliberately "leaking" the Grand Jury report.

**Response:** The City has no information to enable it to agree or disagree with the finding.

2. The accountability of Grand Jury reports at the San Diego City Hall is virtually non-existent. No system is in operation to indicate who actually receives and reads the reports prior to public release.

Members of affected entities receiving Grand Jury reports are known to have either taken the reports home and/or had the report delivered to their homes. In such cases, reports were left unprotected in the home (e.g., over the weekend on a kitchen table or in an unlocked container in the house) where it was possible unauthorized persons had access to the report prior to public release.

**Response:** The City disagrees with the finding. Accountability rests with each individual, either named addressee or his or her authorized representative, who receives a sealed copy of a report directly from the Grand Jury. Individuals who receive the reports are aware of the Penal Code provisions relative to premature disclosure, further emphasized in each report transmittal letter from the Grand Jury Foreman, and that they may be subject to follow-up inquiry should that occur.

When distribution of the sealed envelopes is made by a Grand Jury messenger to a single City staff member for distribution in turn to the addressees of the envelopes, the chain of accountability begins with that individual and passes to the addressee or authorized recipient along with the sealed envelope. In the case of the October 29, 1998 report entitled "Standards of Disclosure RE: Ballpark Financing Projects," the staff member who received the envelopes from the Grand Jury representative recorded the name of each individual who received an envelope at the time delivery was made.

Finally, it is not uncommon for officials of the City of San Diego to take important work home for review during evenings or weekends. It is believed that the residences of these individuals, with informal as well as formal areas used for office work or personal business matters at home, afford a reasonable level of security to Grand Jury documents beneath the umbrella of the individual's general efforts to safeguard his or her family members and personal property.

3. Security by City Hall personnel of Grand Jury reports is minimal.

**Response:** The City disagrees with the finding. Addressees of Grand Jury reports are assigned offices with door locks which may be operated only by the individual and responsible staff members, building management supervisors, and security officers. The offices are within areas where access is controlled by receptionists during business hours and are locked at other times. Security measures are reviewed periodically by the San Diego Police Department.

4. City Hall personnel do not appreciate the seriousness of unauthorized release of the contents of a Grand Jury report. Unauthorized release can result in the removal from office of public or elected officials for violation of Penal Code Section 933.05(f).

**Response:** The City partially disagrees with the finding. City Hall personnel have been made aware of the requirements of the Penal Code concerning the handling of Grand Jury Reports. The City agrees that a violation of Penal Code section 933.05(f) may result in removal from office of public officials in some circumstances, but not all.

5. Government officials were misled regarding the legal affiliation of non-governmental personnel. This resulted in misapprehension regarding the standing of such persons in representing government entities.

**Response: The City disagrees with the finding as it pertains to City officials.**

6. City Hall personnel authorized to read the pre-released copies of Grand Jury reports do not always avail themselves of the prescribed opportunity to contact and speak to the Grand Jury on matters of concern before the public release of the report as stated in Penal Code 933.05(d).

**Response: The City partially agrees with the finding. Affected agencies and personnel also have other legal avenues to address Grand Jury reports prior to public release; for example, meeting with the Presiding Judge.**

7. Any person with an agenda that disagrees with a Grand Jury report can conceivably misrepresent himself/herself to a government official, in order to attack, detract from, or attempt to stop or delay a Grand Jury report.

**Response: The City agrees with the finding.**

#### **RECOMMENDATIONS:**

**99-31: The City Council should institute adequate policy procedures to ensure that Grand Jury reports are accorded proper security.**

**Response:** This issue will be addressed in the development of a City Council Policy governing handling of Grand Jury reports which will be reviewed and acted upon by the Council.

**99-32: The City Council should institute a program wherein newly elected members and other officials receive instruction on the Civil Grand Jury process.**

**Response:** This recommendation will be included in the Council Policy referenced in the City's response to Recommendation 99-31.

**99-33: In the event any person represents himself/herself to the City Council or City Attorney extending an offer to illegally interfere in any way with a Grand Jury report or the processes of the Grand Jury, he should be reported to the Grand Jury Foreman. The Foreman will take necessary action to investigate the matter for possible legal action by an appropriate agency.**

**Response:** The City will take such action as is appropriate under the circumstances when an attempt to illegally interfere with the Grand Jury process becomes known.



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MICHAEL T. UBERUAGA  
City Manager

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cc: Honorable Mayor and Council